

CANADA / JUDGMENT

Padma v. Lalli

2021 BCSC 2088

COURT

Supreme Court of British Columbia

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2021 BCSC 2088 Padma v. Lalli

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Padma v. Lalli,

2021 BCSC 2088

Date: 20211026

Docket: H150825

Registry: Vancouver

Between:

Jasbir Singh Padma, Charanjit Singh Sahota and Amitjot Singh Sandhu aka Amit Sandhu as the
Litigation Representative of the Estate of the Deceased

Nirmal Singh Sandhu

Plaintiffs

And

Karanvir Terry-Singh Lalli and the Estate of the Deceased

Nirmal Singh Sandhu by its Litigation Representative, Amitjot Singh Sandhu aka Amit Sandhu

Defendants

- and -

Docket: H150992

Registry: Vancouver

Between:

Amitjot Singh Sandhu aka Amit Sandhu as the Litigation Representative of
the Estate of the Deceased Nirmal Singh Sandhu

Plaintiffs

And

Karanvir Terry-Singh Lalli and the Estate of the Deceased Nirmal Singh Sandhu by its Litigation
Representative, Amitjot Singh Sandhu aka

Amit Sandhu

Defendants

- and -

Docket: H150993

Registry: Vancouver

Between:

Amitjot Singh Sandhu aka Amit Sandhu as the Litigation Representative of the
Estate of the Deceased Nirmal Singh Sandhu

Plaintiffs

And

Karanvir Terry-Singh Lalli, the Estate of the Deceased Nirmal Singh Sandhu
by its Litigation Representative, Amitjot Singh Sandhu aka Amit Sandhu,
Jasbir Singh Padda, Charanjit Singh Sahota

Defendants

Before: The Honourable Mr. Justice Skolrood

Reasons for Judgment

Counsel for the Plaintiffs in All Actions:

D. Gautam

A. Batra

Counsel for the Defendant,

Karanvir Terry-Singh Lalli in All Actions:

G. Palm

C. Rodocker

O. Oszkiel, Articled Student

Place and Date of Trial/Hearing:

Vancouver, B.C.

June 14-18, 21-25 and 28-30, 2021

Place and Date of Judgment:

Vancouver, B.C.

October 26, 2021

Introduction

- [1] In the three proceedings before the Court (Action Nos. H-150825, H-150992 and H-150993), the plaintiffs seek to foreclose on certain mortgages granted by the defendant Karanvir Terry-Singh Lalli (referred to in these reasons as Terry Lalli) and which are registered against property owned by Mr. Lalli located at 6660 No. 6 Road in Richmond, BC. (the "No. 6 Road Property").
- [2] While foreclosure proceedings are typically determined on a summary basis, there are numerous factual issues in respect of the mortgages in issue and the alleged underlying debts that resulted in the proceedings being referred to the trial list.
- [3] Many of the issues result from the fact that the principal alleged lender, and the primary architect of all of the alleged loans, Mr. Nirmal Singh Sandhu, died in 2017. Thus, there is no direct evidence from the person most knowledgeable about the various transactions. Matters are further complicated by the fact that the alleged loans were made in 2007 and 2008 and there is minimal formal documentation setting out the terms of the loans.
- [4] The primary defence advanced by the defendants is that each of the three actions is statute barred pursuant to the terms of the Limitation Act. The parties all agree that the limitation issues are to be decided under the now repealed Limitation Act, R.S.B.C. 1996, c. 266 [1996 LA]. The defendants also submit that the plaintiffs have failed to establish that Terry Lalli in fact received the funds encompassed by the mortgages in issue.

Hearsay and Credibility/ Reliability

- [5] It is useful at the outset to comment generally on the evidence led at trial.
- [6] As noted, Nirmal Sandhu was a central figure in all of the loans in issue. Given that Mr. Sandhu is deceased, there is considerable hearsay evidence about statements attributable to him. A useful summary of the principles governing the treatment of such evidence can be found in the decision of Mr. Justice Voith, as he then was, in *Gutierrez v. Gutierrez*, 2015 BCSC 185. That was a resulting trust case in which both parties, who were siblings, sought to

rely on out-of-court statements made by their deceased father. Mr. Justice Voith discussed the court's approach to considering such statements at paras. 31-34:

- [31] Since Mr. Gutierrez is deceased, his direct evidence is no longer available to the court and so the requirement of necessity is met; *R. v. Blackman*, 2008 SCC 37 at para. 34.
- [32] In *Khelawon*, the Court addressed the need for threshold reliability and observed that "the central underlying concern is the inability to test hearsay evidence" and that a principled approach should be adopted in order to identify "those cases where this difficulty is sufficiently overcome to justify receiving the evidence"; at para. 61. The Court then identified two scenarios where this might be the case: where the truth and accuracy of the statement can still be sufficiently tested despite an inability to cross examine the declarant under oath in court, or where the circumstances are such that there is no concern about the trustworthiness of the statement; at paras. 62-63. The Court then noted:
- [92] When the reliability requirement is met on the basis that the trier of fact has a sufficient basis to assess the statement's truth and accuracy, there is no need to inquire further into the likely truth of the statement. That question becomes one that is entirely left to the ultimate trier of fact and the trial judge is exceeding his or her role by inquiring into the likely truth of the statement. When reliability is dependent on the inherent trustworthiness of the statement, the trial judge must inquire into those factors tending to show that the statement is true or not
- [33] Here, the Deceased did not leave a sworn or taped statement, nor were there early opportunities to cross examine him under oath, and so the first *Khelawon* circumstance, the presence of adequate substitutes, does not apply; *Khelawon* at para. 106. Turning to the second circumstance, inherent trustworthiness, I must consider whether there are "indicia of trustworthiness sufficient to displace the general exclusionary rule"; *Blackman* at para. 38.
- [34] A number of factors can be considered when assessing the threshold reliability of a hearsay statement, including:
- 1) the presence or absence of a motive to lie (*Blackman* at para. 42; *Khelawon* at para. 67);
 - 2) independent corroborative evidence that "goes to the trustworthiness of the statement" (*Blackman* at para. 55; *Khelawon* at para. 67; *R. v. Couture*, 2007 SCC 28 at para. 83);
 - 3) timing of the statement relevant to the event, contemporaneity (*Khelawon* at para. 67);
 - 4) the declarant's mental capacity at the time of making the statement (*Khelawon* at para. 107);

- 5) solemnity of the occasion and whether the declarant's statement was made "in circumstances that could arguably be akin to the taking of an oath where the importance of telling the truth and the consequences of making a false statement were properly emphasized" (Couture at para. 89; Khelawon at para. 86).
- [7] To the extent that other witnesses testified about statements allegedly made by Mr. Sandhu or notes prepared by him, the credibility and reliability of those witnesses' evidence must be considered.
- [8] Numerous authorities have discussed the principles governing the assessment of credibility: see in particular *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356-357 (B.C.C.A.); *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 185-87, *aff'd* 2012 BCCA 296, leave to appeal *ref'd* [2012] S.C.C.A. No. 392. In *Bradshaw*, Madam Justice Dillon held that conflicting testimony should be assessed in light of the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (at para. 187, citing *Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Q.B.)).
- [9] There were problems with the evidence of virtually all of the witnesses. Many of those problems result from the difficulties previously identified, most notably the passage of time and the absence of clear documentation. However, rather than make sweeping determinations about credibility and reliability at this stage, I will consider the evidence of the various witnesses in relation to the issues that arise and, where necessary, will identify what evidence I accept and what I reject.
- [10] The one exception to this approach concerns the evidence of Binder Lalli, who was called as a witness in the plaintiffs' case. During his testimony, Mr. Lalli professed to have minimal recollection of many key facts and events. He attributed his difficulties to various health conditions. The plaintiffs argued that Mr. Lalli was more competent than he appeared and that he was essentially feigning his claimed memory loss.
- [11] Some medical evidence was provided about Mr. Lalli's health issues, but it fell short of establishing any cognitive impairment affecting his memory. Regardless, whether genuine or not, Mr. Lalli's testimony was so full of gaps and inconsistencies that I am unable to place any weight on his evidence.
- [12] One additional point about the evidence. I permitted the plaintiffs to introduce into evidence affidavits sworn by Nirmal Sandhu in support of the original petitions. The affidavits in large part are very short, speak to the basic facts of the different loans and identify certain documents. Very little turns on the evidence contained in these affidavits as, subject to one exception that I will return to, they touch only marginally on the central facts and issues in dispute.

Background

[13] I will provide a very general overview of the background facts and then will deal with the evidence in more detail as needed when addressing the plaintiffs' claims.

The Parties and Other Key Individuals

[14] As noted at the outset, Nirmal Singh Sandhu was involved in all aspects of the three loans that are in issue. According to various witnesses, Mr. Sandhu was a realtor, sometimes insurance broker and was apparently involved in both loaning and borrowing money. By all accounts, he was a trusted friend and advisor to many of the people who testified at trial, both in the plaintiffs' and the defendant's case. Again, Mr. Sandhu passed away in 2017.

[15] It is alleged that Mr. Sandhu loaned funds totalling \$132,534 that form part of the loan secured by the mortgage at issue in Action No. H-150825 ("Mortgage No. BB0876682"). It is further alleged that Mr. Sandhu was the sole lender of funds totalling \$55,000 and \$120,000 secured by the mortgages at issue in Action Nos. H-150992 and H-150993, (respectively "Mortgage Nos. BB0265514 and CA426763").

[16] Mr. Sandhu was married to Baljinder Sandhu who testified at trial, as did the Sandhus' son Amitjot Singh Sandhu. Amitjot Sandhu is the litigation representative of the estate of Nirmal Sandhu.

[17] Jasbir Singh Padda is a plaintiff in Action No. H-150825. Mr. Padda is a licenced realtor who worked with Mr. Sandhu. The two were good friends. Mr. Padda alleges that he provided funds totalling \$116,800 as part of the loan alleged to be secured by way of the mortgage at issue in Action No. H-150825.

[18] Charanjit Singh Sahota is also a plaintiff in Action No. H-150825. He is a retired longshoreman and a friend of both Nirmal Sandhu and Jasbir Padda. Mr. Sahota alleges that he provided funds totalling \$116,666 as part of the loan to be secured by way of the mortgage at issue in Action No. H-150825.

[19] All of the loans in issue are alleged to have been made to or on behalf of members of the Lalli family. The evidence established that the Lalli family and the family of Nirmal Sandhu had close ties in India as a result of which, Nirmal Sandhu and members of the Lalli family in Canada were also close. Key members of the Lalli family for the purposes of these proceedings are:

- a) Binder Lalli was involved in the construction industry for many years, building both residential and commercial properties;
- b) Mohinder Lalli is Binder Lalli's wife;
- c) Terry Lalli is Binder and Mohinder's son and the youngest of their five children. Terry is again the registered owner of the No. 6 Road Property; and

- d) Palvinder Lalli is Binder Lalli's sister. She is a bookkeeper by training who has also been involved in the construction and development industry for many years.

Mortgage No. CA426763 (Action No. H-150993)

- [20] Mortgage No. CA426763 (the "763 Mortgage"), in the amount of \$120,000, is dated April 17, 2007 and was registered against the No. 6 Road Property on April 20, 2007. The lender is identified as Nirmal Sandhu and the borrower as Terry Lalli. The defendant acknowledges that Terry Lalli executed the mortgage.
- [21] This mortgage stems from a pre-existing debt of Binder and Mohinder Lalli to Nirmal Sandhu, dating back to 1997. In an agreement dated May 6, 1997, Binder and Mohinder Lalli acknowledged borrowing \$250,647 from Mr. Sandhu, which amount was secured by two promissory notes, both dated April 30, 2017: one in the amount of \$215,000 and the second in the amount of \$35,647.
- [22] That debt apparently remained unpaid as a result of which, on October 3, 2006, Mr. Sandhu filed a writ of summons and statement of claim seeking recovery of the amount owed. In conjunction with commencing the action, Mr. Sandhu caused a certificate of pending litigation ("CPL") to be filed against the No. 6 Road Property.
- [23] Subsequently, in order to resolve the matter, Binder caused his company, 0732433 B.C. Ltd. ("433 Co."), to grant a mortgage to Nirmal Sandhu dated April 17, 2007 in the amount of \$120,000 which was subsequently registered against property located on Hastings Street in Vancouver owned by 433 Co.
- [24] On the same day, Terry Lalli executed the 763 Mortgage in favour of Nirmal Sandhu also in the amount of \$120,000.
- [25] On April 18, 2007, Mr. Sandhu discharged the CPL registered against the No. 6 Road Property and on April 19, 2017, Binder and Mohinder Lalli transferred title to the No. 6 Road Property to Terry Lalli.
- [26] On April 20, 2007, a mortgage in the amount of \$800,000, executed by Terry Lalli in favour of the Toronto Dominion Bank was registered against the No. 6 Road Property. At the same time, two existing mortgages registered against the property were discharged.
- [27] Subsequently, on April 26, 2007, the 763 Mortgage was registered against the No. 6 Road Property.
- [28] This arrangement was reflected in an agreement signed on March 18, 2007 by Nirmal Sandhu and Binder Lalli. In particular, it was agreed that the TD Bank mortgage would have priority and that the No. 6 Road Property would be transferred to Terry Lalli.

- [29] It is also useful to note that after Terry Lalli executed the 763 Mortgage, but before the mortgage was registered on title, Terry Lalli executed a mortgage dated April 23, 2007 in the amount of \$300,000 in favour of his sister Hardeep Lalli (also known as "Leanne Lalli"), which was registered in priority to Mr. Sandhu's mortgage.
- [30] Ms. Lalli testified that she had no recollection of this mortgage and she could not say whether in fact she ever loaned Terry Lalli \$300,000. It is quite apparent that she did not because, on her own evidence, she had no independent source of income at the date the mortgage was granted. The plaintiffs submit that this was a sham transaction intended to erode the security of the \$120,000 mortgage granted to Mr. Sandhu. That may well be but little turns on this issue as Ms. Lalli's mortgage was subsequently discharged.
- [31] As indicated, the defendants acknowledge that Terry Lalli executed the 763 Mortgage. They also acknowledge that Nirmal Sandhu provided some consideration for the mortgage in that he discharged the CPL registered against the No. 6 Road Property in order to facilitate the transfer of the property to Terry.
- [32] However, the defendants submit that the mortgage was a demand loan and that the limitation period for suing on the loan expired on April 17, 2013, prior to the commencement of the plaintiffs' action. Determination of the limitation issue turns on whether there was a subsequent confirmation, by way of a payment or otherwise, that extended the limitation period. I will return to this question below.

Mortgage No. BB026514 (Action No. H-150992)

- [33] Mortgage No. BB026514 (the "514 Mortgage") in the amount of \$55,000 is dated September 16, 2008 and was registered against the No. 6 Road Property on September 17, 2008. The lender is identified as Nirmal Sandhu and the borrower as Terry Lalli. The defendants again acknowledge that Terry Lalli executed the 514 Mortgage.
- [34] The plaintiffs rely on a document dated September 15, 2008 that is titled "Mortgage of \$55,000.00" and that is purportedly signed by both Binder and Terry Lalli. The document states in part:

We Binder Singh Lalli and Karanvir Terry Singh Lalli agree to borrow \$55,000 from Nirmal Singh Sandhu for 30 days only. We are both liable for this loan jointly as well as individually. This amount will be registered as mortgage on property located 6660 #6 road Richmond B.C.

- [35] They also rely on a handwritten document titled "Authority to Pay" dated September 17, 2008 also purportedly signed by Terry and Binder Lalli. This document states that Terry Lalli authorizes Nirmal Sandhu to make a number of different payments from the proceeds of the 514 Mortgage.

- [36] There is no direct evidence establishing the authenticity of the signatures of Terry Lalli and Binder Lalli on these two documents. Terry Lalli did not testify and Binder Lalli was generally unable to identify his signature on numerous documents. However, the plaintiffs rely on the opinion evidence of Jean Kovacs, a forensic document examiner, who opines that "there is evidence to indicate" that Terry Lalli signed the first document. Mr. Kovacs found the evidence inconclusive as to whether Terry Lalli signed the second document.
- [37] In addition to these documents, the plaintiffs point to a number of payments made by Mr. Sandhu:
- a) Cheque dated September 17, 2008 in the amount of \$9,700 drawn on Mr. Sandhu's Coast Capital Savings Credit Union ("Coast Capital") payable to the City of Richmond;
 - b) Cheque dated September 17, 2008 in the amount of \$5,000 drawn on Mr. Sandhu's Coast Capital account payable to Binder Lalli;
 - c) Cheque dated September 17, 2008 in the amount of \$31,000 drawn on Mr. Sandhu's Coast Capital account payable to Binder Lalli;
 - d) Cheque dated September 17, 2008 in the amount of \$3,065 drawn on different Coast Capital account of Mr. Sandhu payable to Binder Lalli;
 - e) Cheque dated September 17, 2008 in the amount of \$1,235 drawn on same Coast Capital account of Mr. Sandhu as referred to in d) payable to Binder Lalli; and
 - f) An invoice from Fairdeal Carpets dated March 19, 2007 in the amount of \$4,600 with a notation "Paid by Nirmal on March 19th, 07" and an accompanying credit card slip confirming payment.
- [38] These payments total \$54,600, not the \$55,000 mortgage amount. Further, the defendants submit that there is little evidence tying the payments to the 514 Mortgage. They also point out that the payments do not align completely with the list of payments set out in the Authority to pay document.
- [39] While I agree that the evidence is thin, the fact that the payments total almost \$55,000 and the majority were made on September 17, 2008, the same date as the Authority to Pay and two days after the agreement referencing the 514 Mortgage is sufficient to satisfy me that Mr. Sandhu paid approximately \$55,000 to or on behalf of Binder and/or Terry Lalli which payments were secured by the 514 Mortgage.
- [40] As with the 763 Mortgage, the real issue in dispute is whether the limitation period for suing on the loan has expired, or whether the limitation period was extended.

Mortgage No. BB0876682 (Action No. H-150825)

- [41] Mortgage no. BB0876682 (the "682 Mortgage") in the amount of \$350,000 is dated July 7, 2007 and was registered on the same day against the title to the No. 6 Road Property. The lenders are identified as Jasbir Singh Padda, Charanjit Singh Sahota and Nirmal Singh Sandhu and the borrower as Terry Lalli. Again, the defendants do not take issue with the fact that Terry Lalli executed the mortgage.
- [42] The defendant also does not take serious issue with the fact that at least \$350,000 was advanced by the plaintiffs and secured by the 682 Mortgage. His position once again is that the limitation period for suing on this loan has expired.
- [43] Given the defendant's position, it is not necessary to review at great lengths all of the circumstances surrounding the 682 Mortgage. However, some understanding of the background facts is useful as they are relevant to the limitation defence raised by the defendant.
- [44] The 682 Mortgage is related to dealings on a different property, located at 2743 - 2745 East Hastings Street in Vancouver (the "Hastings Property"). Binder Lalli purchased that property in July 2005 from 448989 B.C. Ltd. ("989 Co."). As part of the transaction, 989 Co. agreed to a vendor take-back mortgage in the amount of \$500,000. Binder Lalli subsequently assigned this contract to his company, 433 Co.
- [45] 989 Co.'s mortgage was registered as a second mortgage on the Hastings Property, behind a first mortgage granted by 433 Co., and covenanted by Binder and Mohinder Lalli, to Piara Singh Beesla and Surjit Kaur Beesla in the amount of \$550,000. That mortgage was registered against the Hastings Property on August 26, 2005.
- [46] On February 24, 2006, the Beeslas transferred their mortgage to Awara Ventures Ltd ("Awara"). On January 18, 2007, Awara commenced foreclosure proceedings against 433 Co. and then on July 18, 2007, Awara transferred its interest in the mortgage to a Mr. Le Comte. Subsequently, on January 29, 2009, Mr. Le Comte transferred his interest in the mortgage to 0843459 B.C. Ltd ("459 Co."), a company controlled by Palvinder Lalli, who again is Binder Lalli's sister. The effect of this transaction was to give Palvinder Lalli, through 459 Co., control over the Hastings Property which she developed into a mixed use residential/commercial building.
- [47] Prior to that date, in May 2008, 989 Co., which held the vendor take-back mortgage on the Hastings Property, brought an application in the foreclosure proceeding seeking conduct of sale of the Hastings Property. An order to that effect was granted on May 29, 2008.
- [48] It was around this time that Nirmal Sandhu approached Mr. Padda and Mr. Sahota about collectively loaning some money to Binder Lalli to take care of the 989 Co. mortgage. Mr. Padda testified that he had previously had a bad experience loaning money to Binder Lalli. He described a \$15,000 loan made in 2006 that remained unpaid for some time, ultimately requiring him to commence a small claims action in BC Provincial Court against Binder

Lalli. It was Mr. Padda's evidence that because of this experience, he and Mr. Sandhu met with Palvinder Lalli before agreeing to loan the money. He said that Palvinder Lalli assured them that she would manage the Hastings Property project and would repay the money that Binder owed. Palvinder Lalli denied that this meeting took place.

[49] The plaintiffs rely on a loan agreement dated July 7, 2008 purportedly signed by Terry Lalli and by Binder Lalli, both in his personal capacity and on behalf of 433 Co. The agreement states in part:

I, Binder Singh Lalli agrees to borrow \$350,000 from the undersigned Lenders fo [sic] 30 days. This loan will be registered as mortgage on the property located 6660 no. 6 road Richmond B.C. owned by my son Terry Lalli. This loan will be used to pay off second mortgage from my property located 2743-45 East Hastings Vancouver B.C.

Binder Lalli will give to the lenders fully executed mortgage documents in the same amount to keep in their trust. This document can be registered as inter alia if the borrower default this mortgage. Then upon payment of this mortgage in full lenders will discharge the mortgage from both properties.

[50] The agreement lists the lenders as Jasbir Singh Padda, Charanjit Singh Sahota and Nirmal Singh Sandhu.

[51] There is no direct evidence that Terry and Binder Lalli signed this document, however, Mr. Kovacs opined that there is evidence to indicate that Terry Lalli did so. Further, the agreement is consistent with the fact that on July 7, 2008, Terry Lalli executed the 682 Mortgage in favour of Mr. Padda, Sahota and Sandhu and that, on the same day, Binder Lalli, on behalf of 433 Co., also executed a mortgage in favour of the three lenders in the amount of \$350,000. That second mortgage references the Hastings Property.

[52] The plaintiffs also rely on a document titled "[a]uthority to disperse the mortgage funds" also dated July 7, 2008. I am satisfied, based on the surrounding circumstances as well as a similar opinion from Mr. Kovacs, that this document was signed by Terry Lalli and Binder Lalli. The document refers to a payment of \$300,000 to David Taylor, a Vancouver lawyer, "to pay off mortgage from 2743 east hastings st. Vancouver". It also refers to some additional payments that I will return to below.

[53] Mr. Taylor testified that his then law firm received bank drafts totalling \$300,000, broken down as follows:

Mr. Padda \$116,800

Mr. Sahota \$116,666

Mr. Sahota \$66,534

- [54] The \$300,000 was then paid to the solicitor for 989 Co. and the 989 Co. Mortgage was discharged from the Hastings Property on or about July 14, 2008.
- [55] As noted, the "Authority to disperse" document referred to above, also referred to additional payments totalling \$13,541. In addition, the plaintiffs led evidence of further payments made by Nirmal Sandhu, including a number of cheques made payable to Terry Lalli.
- [56] I do not intend to go through each of these payments, again given the defendants acknowledgement that at least \$350,000 was paid. Independent of that acknowledgement, I am satisfied that Mr. Sandhu did make these payments. I note that the total amount identified by the plaintiffs as coming from Mr. Sandhu is \$132,534, including the \$66,534 referred to above. Added to what was paid by Mr. Padda and Mr. Sahota, the total provided by the three men is \$366,000. However, this is an action on the 682 Mortgage which is in the amount of \$350,000, thus the claim is limited to that amount.

Legal Principles

- [57] As noted, the primary defence advanced by the defendant in all three actions is that the plaintiffs' claims are statute barred. It is common ground between the parties that the applicable limitation period under the 1996 LA is six years pursuant to s. 3 of that Act. It is also common ground that each of the loans underlying the mortgages in issue was a demand loan and that the right to commence an action arose on the day the loan was made. That is also the date on which the limitation period starts to run: *Kong v. Saunders*, 2014 BCCA 508 at para. 20.
- [58] The plaintiffs however assert that the cause of action in all three claims was confirmed within the meaning of s. 5 of the 1996 LA, the relevant portions of which state:
- 5 (1) If, after time has begun to run with respect to a limitation period set by this Act, but before the expiration of the limitation period, a person against whom an action lies confirms the cause of action, the time during which the limitation period runs before the date of the confirmation does not count in the reckoning of the limitation period for the action by a person having the benefit of the confirmation against a person bound by the confirmation.
- (2) For the purposes of this section,
- (a) a person confirms a cause of action only if the person
- (i) acknowledges a cause of action, right or title of another, or
- (ii) makes a payment in respect of a cause of action, right or title of another,
- (b) an acknowledgment of a judgment or debt has effect
- (i) whether or not a promise to pay can be implied from it, and

- (ii) whether or not it is accompanied by a refusal to pay,
- (3) If a secured party has a cause of action to realize on collateral, either of the following is a confirmation by the payer or performer of the cause of action:
 - (a) a payment to the secured party of principal or interest secured by the collateral, or
 - (b) any other payment to the secured party in respect of that party's right to realize on the collateral, or any other performance by the other person of the obligation secured.
- (5) For the purposes of this section, an acknowledgment must be in writing and signed by the maker.
- (6) For the purposes of this section, a person has the benefit of a confirmation only if the confirmation
 - (a) is made to the person or to a person through whom the person claims,

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- (7) For the purposes of this section, a person is bound by a confirmation only if any of the following applies:
 - (a) the person made the confirmation;
- (9) For the purposes of this section, a confirmation made by or to an agent has the same effect as if made by or to the principal.

[59] The principles of agency law are also relevant in that the confirmatory conduct relied on by the plaintiffs are statements and payments allegedly made by Palvinder Lalli. The plaintiffs allege that in doing so, Palvinder Lalli was acting as agent for Terry Lalli. Pursuant to s.5 (9) of the 1996 LA above, a confirmation made by or to an agent is binding on the principal.

[60] The plaintiffs cite *De Cotiis v. Hothi*, 2018 BCSC 2271, aff'd 2019 BCCA 472 [De Cotiis], for a helpful summary of the law of agency. There, the Court in turn referred at some length to the leading Court of Appeal decision in *Keddie v. Canada Life Assurance Co.*, 1999 BCCA 541 [Keddie]. Key principles emanating from the authorities include:

- a) The authority of an agent may be:
 - (i) actual where it results from a manifestation of consent that a person should represent or act for the principal expressly or impliedly made by the principal to the agent personally (Keddie at para. 22), or
 - (ii) apparent, where it results from such a manifestation made by the principal to third parties (Keddie at para. 22);

- b) Actual authority involves a legal relationship between principal and agent created by a consensual agreement to which they alone are parties. The scope of the agent's authority is to be ascertained by applying ordinary principles of construction of contracts, including proper implications from the express words used, usages of the trade or the course of business between the parties (Keddie at para. 23);
- c) Actual authority may be made out by the terms of an oral or written agreement (De Cotiis at para. 215);
- d) Apparent authority depends on some representation through words or conduct on the part of the principal that leads a third party to believe that the agent has the authority in question. Apparent authority is a product of the principal's outward conduct towards third parties, not of the principal's internal agreements or arrangements with the agent (Keddie at para. 28); and
- e) The existence of an agency relationship (actual or implied) does not depend on the terms used by the parties to describe the relationship, but on the true nature of the agreement or the exact circumstances of the relationship. The relationship may be established notwithstanding the absence of terms like "agent", "agency", "principal" or similar words. Whether an agency relationship exists is a question of fact that requires proof from the party alleging the relationship (De Cotiis at para. 217).

Discussion

The 763 and 514 Mortgages

- [61] I will deal with the 763 and 514 Mortgages together because the plaintiffs rely on similar facts and arguments to support their contention that the causes of action in respect of both mortgages were confirmed. I would add that the plaintiffs did not seriously dispute that, absent a confirmation, the limitation periods applicable to the claims have expired. I also note that while I have referred to the position of the plaintiffs collectively, Mr. Sandhu was the sole lender under these two mortgages and is the sole plaintiff, by way of his estate, in the two actions brought on the mortgages.
- [62] The plaintiffs say that Nirmal Sandhu received a bank draft on January 21, 2010 in the amount of \$17,000 and that he allocated \$10,000 of that to the 763 Mortgage and \$7,000 to the 514 Mortgage. In addition, they say that Mr. Sandhu received cash in the amount of \$1,200 on September 18, 2012, which he divided equally between the two mortgages. The plaintiffs submit that these payments constitute confirmation of their causes of action in respect of the 763 and 514 Mortgages. They also submit that Palvinder Lalli confirmed the Mortgages and the underlying debts in a meeting with Mr. Sandhu and Mr. Padda.
- [63] The plaintiffs rely on the following evidence in support of their position:

- a) Mr. Sandhu's Coast Capital bank statement showing a deposit of \$17,000 on January 21, 2010 with handwritten notations with arrows pointing at the words "towards 120k" and "towards 55K";
 - b) An undated handwritten letter allegedly sent by Mr. Sandhu to his lawyer in support of a demand letter issued on behalf of Mr. Sandhu that refers to payments of \$10,600 allocated to the 763 Mortgage and \$7,600 allocated to the 514 Mortgage;
 - c) The bank draft for the \$17,000 accompanied by a handwritten note purporting to allocate \$10,000 and \$7,000 respectively to the two mortgages;
 - d) The lawyer's demand letters dated November 18, 2015, addressed to Terry Lalli that incorporate the payments of \$10,600 and \$7,600 into the calculation of what is said to be owing to Mr. Sandhu;
 - e) A handwritten receipt dated September 18, 2012 for \$1,200 identified by Amitjot Sandhu as being in Mr. Sandhu's writing. The receipt states that the money was received from Terry Lalli and Binder Lalli as "part payment" towards the 763 and 514 Mortgages; and
 - f) Handwritten notes dated December 14, 2013 allegedly prepared by Palvinder Lalli at a meeting with Mr. Sandhu and Mr. Padda.
- [64] I find that the plaintiffs have fallen far short of establishing a confirmation of the causes of action relating to the 763 and 514 Mortgages. I reach this conclusion for the following reasons.
- [65] The bank draft in the amount of \$17,000 is attached to an affidavit sworn by Mr. Sandhu on December 7, 2015, which is one of the affidavits I allowed to be entered into evidence. Mr. Sandhu makes the bald statement in respect of the bank draft that the \$17,000 represents "mortgage payments paid towards the mortgage no. CA426763 in the sum of \$10,000 and mortgage no. BB026514 in the sum of \$7,000". However, Mr. Sandhu does not describe in his affidavit, and indeed there is no evidence about, the circumstances in which the money was paid to Mr. Sandhu. The signature on the bank draft is indecipherable and there is no evidence about who prepared or provided the draft. Nor is there anything on the face of the draft indicating the purpose of the payment. It simply identifies Mr. Sandhu as the payee. While the draft is accompanied by a handwritten note indicating that the \$17,000 was received as mortgage payments of \$10,000 on the 763 Mortgage and \$7,000 on the 514 Mortgage, there is similarly no evidence as to the circumstances in which the note was prepared. The handwritten notes in Mr. Sandhu's bank statement suffer from similar flaws and I am unable to put any weight on those notes.
- [66] In the circumstances, I am unable to accept Mr. Sandhu's bald, and untested, statement, that the payment was towards the two mortgages. However, even if I were able to accept that statement, there is no evidence to establish who made the payment.

- [67] The handwritten receipt for \$1,200 suffers from similar flaws in that there is no evidence about the circumstances in which it was created nor is there any evidence substantiating that the payment, if made, was in fact intended to be applied to the two mortgages. Baljinder Sandhu, the widow of Nirmal Sandhu, testified about the \$1,200, but all she could say is that sometime in 2012, she saw \$1,200 in cash on the table and Mr. Sandhu told her it was from Binder Lalli. Nothing in her evidence supports a finding that the payment was made towards the 763 and 514 Mortgages.
- [68] I am further unable to accept the hand-written letter addressed to Mr. Sandhu's lawyer as evidence of the truth of the contents of the letter with respect to the payments of \$17,000 and \$1,200. As noted, it is undated and thus there is no way of determining when it was written. It is likely that it was written in 2015 which is when the lawyer wrote the demand letters. If that is the case, the letter would be at least eight years after the loans were made and five years after the date of the alleged payment. The lack of contemporaneity undermines the reliability of the statement, as does the fact that it is unsworn and untested (*R. v. Khelawon*, 2006 SCC 57 at paras. 67 and 86). Further, the letter does not identify who made the payment and no corroborating evidence to establish that, if made, it was intended to be applied towards the 763 and 514 Mortgages.
- [69] Finally, the plaintiffs rely on the handwritten notes prepared by Palvinder Lalli which they say confirm the two mortgages and the associated debts. The notes appear refer to the amounts loaned by Mr. Sandhu under each of the three mortgages in issue and some calculations that the plaintiffs say reflect interest owing on the loans and some payments.
- [70] Palvinder Lalli acknowledged that the notes were written by her but says that Mr. Sandhu simply dictated the information to her and that the notes were for tax planning purposes. She testified that she did not know that the figures related to mortgages granted by Terry and Binder Lalli and she denied that she agreed to pay the mortgage amounts.
- [71] As I will discuss further below, I do not believe much of Palvinder Lalli's evidence and I am not satisfied that her explanation of the handwritten notes is true. Regardless, I am unable to find that the notes constitute a confirmation of the plaintiffs' causes of action on the mortgages in issue.
- [72] The defendant mortgagor in all three actions is Terry Lalli yet there is no reference to Terry Lalli in the notes, let alone any acknowledgement of liability on his part. Further, the notes are unsigned and accordingly do not meet the writing and signature requirements of s. 5(5) of the 1996 LA.
- [73] Ultimately, the handwritten notes amount to little more than scratches on a piece of paper to which I am unable to ascribe any meaning or weight.
- [74] For all of the above reasons, I find that the causes of action in Action Nos. H-150993 (763 Mortgage) and H-150992 (514 Mortgage) were not confirmed and are therefore statute barred pursuant to s. 3 of the 1996 LA.

The 682 Mortgage

- [75] There was considerable evidence at trial about the circumstances surrounding the 682 Mortgage and the dealings between the parties. I do not intend to review all of that evidence because determination of the plaintiffs' claim on the 682 Mortgage turns on whether the cause of action under the mortgage was confirmed so as to extend the limitation period. This question raises two main issues:
- a) Whether Palvinder Lalli made payments towards the 682 Mortgage; and
 - b) If she did so, whether she was acting as agent for Terry Lalli.
- [76] In terms of the alleged payments, the plaintiffs rely principally on two payments made by Palvinder Lalli: a) a cheque dated October 15, 2009 from Palvinder Lalli to Mr. Sahota in the amount of \$8,000; and b) a cheque dated March 13, 2010 from Palvinder Lalli's company to Mr. Sahota and Mr. Padda in the amount of \$4,500. I note that the the plaintiffs also rely on Palvinder Lalli's handwritten notes dated December 14, 2013, however as set out above, I do not accept that those notes constitute a confirmation.
- [77] In terms of the \$8,000 cheque, it is written on Palvinder Lalli's personal chequing account and is made out to Mr. Sahota. A note written on the memo line states "Loan Interest". The copy of the cheque in evidence is accompanied by a handwritten note that reads: "interest paid for mortgage on 6660 #6 Rd. on behalf of Terry Lalli for CS Sahota & J. Padda". Mr. Padda identified the handwriting as that of Mr. Sandhu.
- [78] Mr. Sahota testified that he and Mr. Padda had been asking Mr. Sandhu about repayment of their loan to Binder Lalli. According to Mr. Sahota, Mr. Sandhu provided him with the cheque for \$8,000. Mr. Sahota then gave half of that amount to Mr. Padda by way of a cheque dated October 15, 2009 for \$4,000. Mr. Sahota wrote on the memo line of the cheque: "interest share for Lalli's".
- [79] With respect to the cheque for \$4,500, Mr. Padda and Mr. Sahota both testified that they went together to Palvinder Lalli's office and she provided them with the cheque. The cheque is written on the account of Palvinder Lalli's company (459 Co.) and is made out to both Mr. Padda and Mr. Sahota. A note on the memo line states: "interest 2745 E Hastings St.". According to Mr. Sahota, he and Mr. Padda demanded payment of their loan and they threatened to sue. Palvinder Lalli said that the money would be repaid and that they should take this cheque as interest in the mean time.
- [80] Palvinder Lalli denied that either payment was in respect of the 682 Mortgage. With respect to the \$8,000 cheque, she testified that Mr. Sandhu told her that he had loaned Binder Lalli \$10,000. Mr. Lalli had written a repayment cheque for \$10,000 dated March 10, 2009 but Mr. Sandhu did not believe the cheque would clear so he asked Palvinder Lalli to pay him. She said she told Mr. Sandhu that she could only pay \$8,000. She said she made the cheque out to Mr. Sahota at the direction of Mr. Sandhu.

- [81] Palvinder Lalli testified that the \$4,500 cheque was an interest payment on a \$45,000 loan that Mr. Sandhu had made to her and that she had repaid. She produced two cheques from Mr. Sandhu that made up the alleged loan: one dated November 14, 2009 for \$15,000 and the other dated February 1, 2010 for \$30,000. Palvinder Lalli repaid the \$15,000 on December 7, 2009 and the \$30,000 on March 3, 2010. She said that the subsequent \$4,500 cheque dated March 13, 2010 was for interest on the \$45,000 loan, calculated at a rate of 10% per annum. She said that Mr. Sandhu directed her to make the cheque payable to Mr. Padda and Mr. Sahota.
- [82] I do not believe Palvinder's evidence about either the \$8,000 or the \$4,500 payments for a number of reasons:
- a) Generally speaking, throughout her testimony, she was evasive and argumentative, often refusing to acknowledge basic, non-contentious facts, which leads me to find that she was not a credible witness;
 - b) With respect to the \$8,000 cheque, Palvinder again related that cheque to the \$10,000 cheque written by Binder Lalli that Mr. Sandhu believed would not clear. However, the \$10,000 cheque was dated March 10, 2009 and there was no explanation provided why Mr. Sandhu would then ask for repayment from Palvinder Lalli seven months later in October of 2009;
 - c) The note on the \$8,000 cheque does not refer to repayment of a loan on behalf of Binder Lalli - it only states "loan interest". Further, the cheque is made out to Mr. Sahota, not Mr. Sandhu. The only loan outstanding from Mr. Sahota at the time was the loan secured by the 682 Mortgage. It defies belief that a sophisticated and careful business person like Palvinder Lalli would simply make cheques as directed by Mr. Sandhu and inaccurately record the purpose of the payment on the face of the cheque;
 - d) In terms of the \$4,500 cheque, it is not credible that this amount was an interest payment on the \$45,000 loan from Mr. Sandhu. For one thing, there is no corroborating evidence establishing that interest of 10% (or any interest) was payable on the loan. Further, the loan amounts were repaid within a matter of weeks and, as such, there was no basis to pay the entire annual rate of interest; and
 - e) The note on the \$4,500 cheque specifically states that it is interest in respect of 2745 East Hastings Street. This aligns with the plaintiffs' evidence that the 682 Mortgage was granted to secure a loan to pay off the second mortgage on the Hastings Property. It should also be noted that the \$30,000 cheque written by Mr. Sandhu that comprises part of the \$45,000 loan, had a notation on it stating "to complete Lorraine St, Bby". Lorraine Street refers to another development project that Palvinder Lalli's nephew was involved in. Had the \$4,500 cheque truly been intended as interest on the \$45,000 loan, presumably it would have referenced the Lorraine Street project and not 2745 Hastings Street. There is also no plausible explanation for why the cheque was made payable to Mr. Padda and Mr. Sahota.

- [83] In all of the circumstances, I accept Mr. Padda and Mr. Sahota's evidence and I reject Palvinder Lalli's evidence that the payments of \$8,000 on October 15, 2009 and \$4,500 on March 13, 2010 were not made on the 682 Mortgage. Clearly they were. The question then becomes whether, in making the payments, Palvinder Lalli was acting as Terry Lalli's agent.
- [84] The plaintiffs submit that both Binder and Palvinder Lalli had actual and apparent authority to act as agent for Terry Lalli. They rely on the following facts to support their position:
- a) Binder was the head of the Lalli family. His wife Mohinder testified that she simply signed documents when directed to do so by Binder;
 - b) Binder and Palvinder negotiated the terms of the 682 Mortgage without the involvement of Terry, who then simply executed the mortgage in the presence of Binder;
 - c) In 2007, when the 682 Mortgage was granted, Terry Lalli was 21 years old with no independent source of income. There is no evidence to indicate that he had any involvement in financial decisions made by the Lalli family; and
 - d) Palvinder Lalli regularly paid debts on behalf of Binder and Terry Lalli. For example, the evidence demonstrated that Palvinder paid for the house insurance on the No. 6 Road Property as well as Terry Lalli's car insurance.
- [85] The defendant submits that the plaintiffs have failed to prove that Palvinder Lalli was acting as Terry Lalli's agent. Specifically, he says:
- a) There is no evidence of Terry Lalli authorizing Palvinder Lalli to act as his agent, either in writing or verbally;
 - b) The fact that Palvinder Lalli paid some expenses on Terry's behalf is not sufficient to establish an agency relationship given that, on the evidence, she did not seek Terry's permission or authority to do so. A gratuitous payment in the context of a family relationship does not necessarily amount to agency;
 - c) There is no evidence that Terry Lalli ever communicated to the plaintiffs that Palvinder Lalli had authority to act on his behalf or to bind him; and
 - d) The evidence does not establish that the Lalli family acted together as one integrated family business. Rather, members of the family were often at odds with one another.
- [86] I find that Palvinder Lalli had actual authority to act on behalf of Terry Lalli and to bind him as his agent. In particular, I find that the evidence as a whole establishes a "manifestation of consent" whereby Terry Lalli, at least impliedly if not expressly, agreed that Palvinder Lalli had authority to act for him.

- [87] As referred to above, it is clear that Terry Lalli had minimal if any involvement in financial decisions made by his family. He was essentially a nominee (or perhaps less charitably, a dupe) who did what he was told by his father and aunt. The fact that Palvinder Lalli regularly paid expenses on behalf of Terry is a reflection of this relationship. The defendant's position that she did so without Terry's permission defies belief.
- [88] It is also telling that Mr. Padda and Mr. Sahota demanded payment of the debt owing to them from Palvinder Lalli and that, in response to those demands, she made the two payments of \$8,000 and \$4,500. It is quite apparent that all of the parties understood that she did so on behalf of the named mortgagor, Terry Lalli, in order to stave off legal proceedings. The suggestion that Palvinder Lalli acted without authority from Terry and lacked authority to bind him again defies belief.
- [89] I therefore find that the payments of \$8,000 on October 15, 2009 and \$4,500 on March 13, 2010 constituted confirmation of the cause of action on the 682 Mortgage under s. 5(1) of the 1996 LA. Accordingly, the limitation period ran from the March 13, 2010 date. Given that Action No. H-150825 on the 682 Mortgage was commenced on September 28, 2015, it is not statute barred and the plaintiffs in this action are entitled to judgment on the mortgage.

Conclusion

- [90] The claims on behalf of the estate of Nirmal Singh Sandhu in Actions Nos. H-150992 and H-150993 are dismissed.
- [91] In Action No. H-150825, the plaintiffs are entitled to judgment on the 682 Mortgage. The plaintiffs did not clearly identify the terms of the order they seek, thus they have leave to schedule a further appearance. At that appearance, the parties will also address the question of interest under the 682 Mortgage and the amount properly owing. This issue was dealt with briefly at trial, however, I am not satisfied that it was fully canvassed nor do I necessarily accept the calculations provided by Jaswinder Padda, the brother of the plaintiff Mr. Padda.
- [92] Finally, the parties requested that the issue of costs be left until after these Reasons for Judgment were released. They may therefore also deal with costs at the next scheduled hearing.

"Skolrood J."

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